IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CMPMO No.12 of 2001.

Date of Decision : 3.11.2006

State of H.P. …Petitioner.

Versus:

Smt.Urmila Devi. …Respondent.

Coram:

The Hon'ble Mr.Justice V.K.Gupta, Chief Justice.

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.M.S.Chandel,Advocate General with Mr.J.K.Verma, Dy. Advocate General.

For Respondent. Mr.Avinash Jaryal, Advocate.

V.K. Gupta, C.J. (Oral).

A very short question of law is involved for consideration in this case. Vide order dated 24.10.2006 a single Judge Bench of this court has referred the matter before this Division Bench for examining the correctness of the view adopted by a learned Single Judge of this Court in the case of **Piyare Lal vs. State of H.P.**, 2001(3) Shim.L.C.395 with respect to the interpretation which he put upon sub-section (5) of Section 163 of the Himachal Pradesh Land Revenue Act, 1953. Section 163 of the aforesaid 1953 Act reads thus:

> "Sec.163. Prevention of encroachment on lands- (1) Where Government land or land which has

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

been reserved for the site of a village or for the common purposes of the co-sharers therein has been encroached upon by any co-sharer or other person for any purpose including construction of a building or other structure thereon then-

(a) the Revenue Officer may of his own motion or on the application of any other co-sharer eject the encroaching person (hereinafter in this section referred to as the encroacher) from such land and by order, proclaimed in the manner mentioned in section 23, prohibit repetition of the encroachment therein:

Provided that no encroacher shall be ejected under this clause unless he has been given a reasonable opportunity of showing cause against the ejectment;

(b) the Revenue Officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of such encroachment and may, by order, require the encroacher to pay the damages within such period and in such instalments as may be specified in the order;

(c) If the encroacher has erected any building or other structure or has grown crops or planted trees on the encroached land, it shall be competent for the Revenue Officer, while ordering his ejectment to dismantle such building or other structure and confiscate any produce or other material on such land and put the same in public auction and deposit the sale proceedings thereof into the Government treasury ; and

(d) the Revenue Officer may impose upon the encroacher a fine up to (one thousand rupees per bigha or part thereof in the case of first encroachment) and, where the encroachment is repeated, a fine up to (two thousand rupees per

bigha or part thereof for each such subsequent encroachment.)

(2) Any amount payable as damages under clause (b) of sub-section (1) or as fine under clause (d) of that sub-section may be recovered in the same manner as arrears of land revenue.

"(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this Section, the Revenue Officer, not below the rank of an Assistant Collector of the first grade, shall proceed to determine the question, as if he , were a civil Court and shall exercise all such powers as are exercisable by a civil court.

(4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court, and he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure, 1908 to be specified therein.

(5) An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.

(6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved", and

(7) No suit or other legal proceeding shall lie against the Revenue Officer or any person acting under this section in respect of anything in good faith done or purported to have been done under

> the provisions thereof or the rules made thereunder.
>
> Explanation- For the purposes of this section, any person who holds land under a lease granted by the Government for a fixed term and continues to be in possession of the land beyond the expiry of the period of lease shall be deemed to be encroacher under such person gets the lease extended or renewed.)"

Brief facts leading to this Reference are that in the present case the State of Himachal Pradesh has challenged the legality and validity of a judgment dated 6th April, 2000 passed by the learned District Judge, Bilaspur in Civil Appeal No.73 of 1997, whereby he, while setting aside the impugned order dated 2-7-1997 passed by the Assistant Collector Ist Grade, Ghumarwin, District Bilaspur remanded the matter to the said Assistant Collector with directions to him to decide the case afresh in accordance with the provisions contained in sub-sections (3) and (4) of Section 163 of 1953 Act.

The aforesaid Civil Appeal No.73 of 1997 was filed before the learned District Judge by the respondent Smt.Urmila Devi feeling aggrieved as she did against the aforesaid order of the Assistant Collector Ist Grade, Ghumarwin because according to her, despite her having set up a plea of adverse possession which in turn raised a question of title wherein a right was claimed by her based upon her such plea of adverse possession, the Assistant Collector did not proceed to determine the said question of title by converting and treating himself to be a civil court and

exercising all the powers of a civil court as contemplated under sub-section (3) of Section 163 (supra). This was the limited grievance of the respondent in the aforesaid Civil Appeal No.73 of 1997. The respondent's specific and precise contention before the learned District Judge was that because the Assistant Collector did not decide the question as to title linked with her claim of adverse possession in accordance with sub-section (3) (supra), the order passed by the Assistant Collector was bad in law. Agreeing with the contention of the respondent, the learned District Judge, as noticed at the outset, set aside the aforesaid order of the Assistant Collector and remanded the matter to him for afresh decision. In para 8 of the impugned judgment dated 6th April,2000, the learned District Judge has very clearly observed that while entertaining and allowing the aforesaid appeal he was exercising his jurisdiction under sub-section (5) of Section 163 (Supra). For ready reference, para 8 of the aforesaid judgment is reproduced hereinafter which reads thus:

> "8. As regards the argument of the learned District Attorney that the present appeal does not lie before this court, section 163(5) Supra would clearly go to show that an appeal from the decree of the revenue officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of subordinate judge in an original suit. Therefore, the plea raised by the learned District Attorney does not have any force. Accordingly, I come to the conclusion that the appellant has proved this point. As such, this point is decided in favour of the appellant."

When this matter came up for consideration before a Single Judge of this court on 24.10.2006, in support of the aforesaid view adopted and taken by the learned District Judge, reliance was placed by the learned counsel for the respondent upon the aforesaid single Judge Bench judgment of this court in the case of **Pyare Lal vs. State of H.P.** (Supra), in which the following observations have been made by the learned Single Judge in para 12 of the said judgment. Para 12 reads thus:

> "12. It was contended by Mr.Bhupender Gupta, learned Senior Counsel for the appellant, that the Revenue Officer did not try the eviction proceedings as civil suit as envisaged under sub-sections 3 and 4 of Section 163 of the Act. He also brought my pointed attention to the fact that no decree was drawn by the Revenue Officer to enable the plaintiff-appellant to file an appeal before the District Judge as contemplated under sub-section (5) of section 163 of the Act. It may be true, but, to me it seems, an appeal could have been filed by the plaintiff on the ground that question has not been decided in accordance with the Code of Civil Procedure and formal decree has not been drawn. This was a matter to be agitated before the learned District Judge in an appeal under sub-section (5) of Section 163 of the Revenue Act. In my view, non compliance with the procedure by the Assistant Collector in exercise of the jurisdiction under sub-section (3) of Section 163 shall not clothe the Civil Courts with the jurisdiction to try such Sit in view of the bar created under section 171(2)(xxv) of the Revenue Act."

A combined reading of sub-sections (3) and (4) of Section 163 (supra) clearly suggests, without an iota of doubt that whenever a question as to title or a claim as to adverse

possession, wherein it is *inter-alia* claimed by an encroacher that he or she has been in adverse possession of the property in question for a period beyond thirty years, arises in proceedings relating to land from which ejectment is sought to be effected by a revenue Authority exercising jurisdiction under sub-section (1) of Section 163, the said revenue Authority (not below the rank of Assistant Collector Ist Grade) is under an obligation to proceed to determine this question as if he were a civil court and for such determination he is required to exercise all the powers of a civil court. A combined reading of the aforesaid two sub-sections further suggests that for the determination of the said question, the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court. In the ultimate analysis the said Revenue Authority is required to pass a judgment as well as a decree in the same manner as a civil court would do with respect to a suit under the provisions of the Code of Civil Procedure. Sub-sections (3) and (4) of Section 163, therefore, constitute a complete code in themselves because these two sub-sections lay down and prescribe a complete procedure for determination of the question by the Revenue Officer relating to the title or the adverse possession and the manner in which such question has to be determined by him.

Then comes sub-section (5) of Section 163 which, in absolutely clear and categorical terms lays down that whenever the Revenue Officer, exercising his jurisdiction under sub-sections (3) and (4) (supra) passes a judgment

and decree, an appeal there against shall lie before the District Judge as if the decree passed by the Revenue Officer is a decree passed by a subordinate judge in an original civil suit. The appeal contemplated under sub-section (5), therefore, only is an appeal against an order, actually against a judgment and decree which is passed by the Revenue Officer under sub-section (4) (supra). If, as has happened in the present case, the Revenue Officer does not exercise, or refuses to exercise, his jurisdiction under sub-section (3) and does not proceed to decide the question of title or adverse possession in accordance with sub-sections (3) and (4) and proceeds to decide the question of encroachment without taking recourse to sub-section (3) and sub-section (4), any order passed by him is not appealable before the District Judge because such an order would not amount to a judgment or a decree passed under sub-section (4) of Section 163 (supra). In other words, the limited, the only jurisdiction conferred upon a District Judge under sub-section (5) is to entertain an appeal if the Revenue Officer has actually passed an order while exercising his jurisdiction under sub-sections (3) and (4) of Section 163 (supra). At the risk of repetition and reiteration, we hold that if for any reason the Revenue Officer does not exercise his jurisdiction under the aforesaid two sub-sections and passes an order rightly or wrongly, such order is not appealable before the District Judge because in that event sub-section (5) is not at all attracted. Such an order, if at all might be appealable before the hierarchical set up of revenue authorities prescribed and contemplated under

Section 14 of 1953 Act. The view taken by the learned Single Judge of this Court, therefore, in para 12 of the judgment in **Pyare Lal's** case (supra), is not correct. Actually we have noticed an observation made by the learned Single Judge in para 7 of the aforesaid judgment in which he himself has observed that sub-section (5) provides for an appeal from the decree of the Revenue Officer made under sub-section (4) to the District Judge. It appears to us that perhaps the learned Single Judge made an isolated, stray comment about the applicability of sub-section (5) in para 12 of the judgment which comment is not correct.

Since the appeal filed by the respondent Smt.Urmila Devi before the learned District Judge was not competent or maintainable, the learned District Judge had no jurisdiction to entertain the appeal, and hence the order passed by him on 6th April, 2000 and impugned in this petition is totally illegal and contrary to the provisions of law. This order is, therefore, liable to be set aside.

Consequent upon the setting aside of the impugned order, one course of action available to us was to have sent the respondent back to the hierarchy of Revenue Officers (prescribed under Section 14 of 1953 Act by our insisting upon her to file an appeal against the order dated 2.7.1997 passed by the Assistant Collector Ist Grade. Almost 10 years have elapsed in the meanwhile. Sending the respondent back to the rigmarole of the appellate procedure all over again would amount to putting her in a grave hardship because we are quite confident and have no doubt in our minds that even

the appellate authorities under the 1953 Act would take the same view as the learned District Judge has taken that the Assistant Collector Ist Grade committed an error in not taking proper recourse to law by exercising his jurisdiction under sub-sections (3) and (4) of Section 163. We are saying so more particularly, in view of the fact that in the reply to the notice filed by the respondent before the Assistant Collector, the respondent had clearly taken a stand that she had become owner of the property in question by way of adverse possession. Sending the respondent back, therefore, to the hierarchy of the Appellate Authorities under the 1953 Act would be an exercise in futility as well as wastage of time.

Even while we allow this petition and set aside the impugned order as passed by the learned District Judge, we order that the matter shall stand remitted to the Assistant Collector Ist Grade, Ghumarwin, by setting aside his order dated 2.7.1997 and by directing him to decide the matter afresh in the light of the aforesaid observations.

Petition is allowed with no order as to costs.

The record be sent back to the concerned authority forthwith.

(**V.K.Gupta),**
Chief Justice.

(Deepak Gupta),
Judge.

3rd November, 2006.
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